U. S. v. *Straus Bros.*, 69 C. C. A. 201. The question was whether the defendants, importers, should pay duty on ping pong balls as celluloid, or as toys. The amount of the duty would be less if they were toys. The court said: "We cannot close our eyes to the fact that the game of ping pong is ordinarily played on a table which is of such a height that it would be difficult for children to play the game; that it is a game indulged in by adults, and one which requires a degree of skill not ordinarily possessed by children."

EVIDENCE—PUBLIC RECORDS OF ANOTHER STATE.—Action to recover for alleged negligence in transporting flax whereby a part of the flax was lost in transit. Plaintiff relied upon a discrepancy between the weight taken at the shipping point when the flax was loaded and the weight at the point of destination in Minnesota, as shown by the records in the office of the state weighmaster of Minnesota, who was required by law to keep such records. *Held*, that the records were admissible in evidence to show the weight of the flax at the point of destination. *Miller* v. *Northern Pac. R. Co.* (1908), — N. D. —, 118 N. W. 344.

That a public record is admissible in evidence whenever a duty exists to keep the record is well settled. 3 WIGMORE, EVIDENCE, § 1639; *Gaines* v. *Relf*, 12 How. 570; *Ferguson* v. *Clifford*, 37 N. H. 95. In accordance with the opinion in the present case the rule appears to be that an official statement made by a foreign officer is equally admissible with one made by a domestic officer. 3 WIGMORE, EVIDENCE, § 1633. That the duty is not recognized by the domestic law is immaterial, for it exists for the foreign officer.

GUARANTY—CHANGE IN PRINCIPAL CONTRACT—DISCHARGE OF GUARANTOR. —Plaintiff sold one S., a contractor without means of his own, a bill of lumber on the terms hereinafter mentioned. Defendant guaranteed the payment "for lumber—to be delivered free on board cars (at destination)—payment to be made within sixty days," etc. Plaintiff compelled S. to pay the freight, which amounted to seven per cent of the purchase price, and this amount was credited to him on the bill, leaving the amount guaranteed smaller by that amount. In an action on the guaranty, *held* (KERWIN, MARSHALL and TIMLIN, JJ., dissenting), that the payment of the freight was such a change in the principal contract as discharged the guarantor. *Chandler Lumber Co.* v. *Radke* (1908), — Wis. —, 118 N. W. 185.

The strict doctrine that any change in the principal contract discharges the guarantor is well illustrated by the comparatively early English case of *Whitcher* v. *Hall*, 5 B. & C. 269. There the plaintiff agreed to let the milking of thirty cows, and the defendant guaranteed the payment of the rent. He was held to be discharged by the fact that twenty-eight cows were given for a part of the year and thirty-two for the rest, making an average of thirty for the year, and the court was content to rest its decision on the ground that contract performed was not the identical one guaranteed, though the difference was admitted to be slight. "The question does not turn on

the amount of the difference." In *Holme* v. *Brunskill,* 47 L. J. Q. B. 610, though the jury had found that the alteration of the principal contract had made no material difference in the relation between the parties or affected the ability of the tenant to perform the covenant guaranteed, the court refused to inquire into the effect of the alteration, but held the guarantor discharged. BRETT, L.J., dissented. The reasoning in this case was followed in *Rex* v. *Herron* (1903), 2 Ir. Rep. 474. But in *Sanderson* v. *Aston,* 8 Ex. 73, a secret agreement changing the notice necessary to terminate the service from one to three months was held not to discharge the surety that the court laying down the rule that the terms of the principal contract are not to be looked to "unless those terms are made a part of the surety's agreement or unless something has been done, which, with reference to those terms, substantially alters his position." The courts of this country, particularly those of Wisconsin, have been rather liberal in qualifying the strict rule laid down in *Witcher* v. *Hall,* supra. There are many New York cases, and some of them recent, holding that any change in the principal contract releases the guarantor. *Page* v. *Krekey,* 137 N. Y. 307; *Trenton Iron Co.* v. *Tassi,* 107 N. Y. Supp. 580. But in *Gansevoort Bank* v. *Empire Surety Co.,* 107 N. Y. Supp. 998, what seems to be a rather forced construction was put on the principal contract in order to hold that no change had been made in it. One judge dissented. The Wisconsin case upon which the court in the case under discussion disagree is *Stephens* v. *Elver,* 101 Wis. 392. There the performance of a building contract was guaranteed. Payment was to be by installments. Small loans were made to the contractor, to be deducted from the next installment, and it was urged that these released the guarantor. The court held otherwise and laid down the rule that changes in the principal contract must be material and substantial in order to release the guarantor. *Cowdery* v. *Hahn,* 105 Wis. 455, distinguishes *Stephens* v. *Elver* on the ground that the advances there were trifling. *Grafton* v. *Hinkley,* 111 Wis. 46, holds that guarantors were not discharged, because a written notice called for in the principal contract was waived by the contractors. The rule laid down in the English case of *Sanderson* v. *Aston,* supra, seems to be the reasonable one. It surely is competent for the guarantor to stipulate the conditions of his guaranty. And it would seem that the principal case could have been disposed of on this ground, for the condition which was changed was stipulated for in the contract of guaranty. Where there are no such stipulations in the contract of guaranty the true reason why the guarantor should be discharged by alterations in the principal contract is not the well worn and euphoneous "not the contract guaranteed," but rather because the guarantor's liability is an unusual and more or less gratuitous one, and the probability of his being called upon ought not to be increased without his consent. In the principal case any substantial change in the provision for sixty days' credit would affect the chance that the guarantor would be called upon. The change made left the possible liability smaller; the probable liability was, however, greater. The case was well decided.